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7 INCAPSULA, INC.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
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12 BLACKBIRD TECH LLC d/b/a BLACKBIRD  
TECHNOLOGIES,

13 Plaintiff,

14 v.

15 INCAPSULA, INC.,

16 Defendant.  
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Case No.: 3:17-cv-06883-VC

**INCAPSULA, INC.'S MOTION TO  
DISMISS UNDER FED. R. CIV. P.  
12(B)(6) AND NOTICE OF JOINDER  
IN CLOUDFLARE, INC.'S MOTION  
FOR JUDGMENT ON THE  
PLEADINGS UNDER 35 U.S.C. § 101**

Date Complaint filed: December 1, 2017

PLEASE TAKE NOTICE that defendant Incapsula, Inc. (“Incapsula”) hereby joins in Cloudflare, Inc.’s Motion for Judgment on the Pleadings Under 35 U.S.C. § 101, *Blackbird Tech LLC d/b/a Blackbird Technologies v. Cloudflare, Inc.*, Case No. 3:17-cv-06112-VC, ECF Nos. 37 and 38 (“Cloudflare Motion”), and moves for dismissal of this action under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted for the same reasons set forth in Cloudflare’s Motion. Incapsula’s motion to dismiss and joinder is based on the Cloudflare Motion, the Reply submitted in support thereof (ECF No. 78), and on such evidence and oral argument as may be presented by Cloudflare at the hearing on the Motion. Additionally, Incapsula incorporates by reference Fastly, Inc.’s Motion for Judgment on the Pleadings that the ’355 Patent is invalid under 35 U.S.C. § 101, *Blackbird Tech LLC d/b/a Blackbird Technologies v. Fastly, Inc.*, Case No. 3:17-cv-06115, ECF Nos. 26 and 27.

Incapsula respectfully requests that any relief ordered by the Court related to the Cloudflare Motion be ordered in favor of Incapsula as well.

Dated: February 1, 2018

FENWICK & WEST LLP

By: /s/ Michael J. Sacksteder

Michael J. Sacksteder

Attorneys for Defendant  
INCAPSULA, INC.

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2018, I electronically filed a true and correct copy of the foregoing INCAPSULA, INC.'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(6) AND NOTICE OF JOINDER IN CLOUDFLARE, INC.'S MOTION FOR JUDGMENT ON THE PLEADINGS UNDER 35 U.S.C. § 101 using the Court's CM/ECF system and in compliance with L.R. 5-1(e)(3), which then sent a notification of such filing to all counsel of record per L.R. 5-1(h)(1).

/s/ Michael J. Sacksteder  
Michael J. Sacksteder

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